



U.S. Customs and
Border Protection

DIS-3 RR:RDL:FAPL
CBP-AP-2019-054739 GRV

June 13, 2019

Mr. Steve Horn
MuckRock News — Dep't MR 70409
411A Highland Ave.
Somerville, MA 02144

Dear Mr. Horn:

This letter is the appeal determination in response to your FOIA Online information request submitted March 12, 2019 that appeals the March 27, 2019 initial response (CBP-2019-035301) of the FOIA Processor (Processor), Privacy and Diversity Office, Customs and Border Protection (CBP), Department of Homeland Security (DHS), that, in effect, denied, (6 CFR §5.6(c)) your initial information request, pursuant to the Freedom of Information Act FOIA (5 U.S.C. § 552), for any and all documents pertaining to the 2005 CBP Ruling, NY L83625, specifically the decision titled "RE: Tariff classification of Petrozuata Heavy synthetic crude oil from Venezuela," issued April 12, 2005 under 19 USC §1625.

The Processor's response provided that the "records you are requesting are no longer available", but did not supplement this bare response with an explanation/rational as to why these records were no longer available.

You appeal the Processor's no records determination without commentary.

For the reasons that follow, the Processor's decision is **Affirmed**; your appeal is **Denied**.

The creation and maintenance of Federal records is controlled by the Federal Records Act (44 U.S.C. Chapters 29, 31 and 33) and the National Archives and Records Administration (NARA) (36 CFR Chapter 1220), which require agencies to make and preserve records containing adequate and proper documentation of their organization, functions, policies, decisions, procedures, and essential transactions. These laws require agencies to establish and maintain a program for the efficient management of records. Records management programs also provide schedules for the disposal of records with approval of the Archivist of the United States.

Most Federal records are temporary. NARA approves such records for destruction when no longer needed in an office to conduct current business. The record retention provisions for CBP's NY rulings is 5 years.

In this matter the records sought were created in 2005 and maintained for at least a 5-year period and then destroyed after the 5-year retention period established by the NARA guidelines. Accordingly, your appeal in this matter is basically moot.

If you believe that this response denies you the administrative remedy you seek, you should pursue judicial review of this agency's initial administrative appeal determination decision pursuant to 5 U.S.C. §552(a)(4)(B) in the U.S. District Court in the district in which you reside or have a principal place of business, or in the U.S. District Court for the District of Columbia.

Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You can contact OGIS in any of the following ways:

By writing -National Archives and Records Administration
8601 Adelphi Road (OGIS)
College Park, MD 20740-6001

By E-mail - ogis@nara.gov
By Telephone - 202-741-5770 - Toll-free: 1-877-684-6448
By Facsimile - 202-741-5769

Sincerely,

Shari Suzuki

Shari Suzuki, Chief
FOIA Appeals, Policy, and Litigation Branch
Office of Regulations & Rulings
Office of International Trade
U.S. Customs and Border Protection